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*Time-  
Dated  
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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

### **TITLE 2. STATE AND CONSUMER SERVICES AGENCY**

#### **NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE STATE AND CONSUMER SERVICES AGENCY**

NOTICE IS HEREBY GIVEN that the State and Consumer Services Agency, pursuant to the authority vested in it by section 87306 of the Government Code, propose an amendment to its Conflict-of-Interest Code. The purpose of this amendment is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The State and Consumer Services Agency proposes to amend its Conflict-of-Interest Code to include employee positions that involve in the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment will add the positions of Director, Special Assistant to the Secretary, and Special Assistant as designated employees to reflect the current organizational structure of the Agency. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendment by submitting them in writing no later than March 21, 2005, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendment. If any interested person or the person's representative requests a public hearing, he or she must do so no later than 15 days before close of the written comment period, by contacting the Contact Person set forth below.

The State and Consumer Services Agency has prepared a written explanation of the reasons for the proposed amendment and has available the information on which the amendment is based. Copies of the proposed amendment, the written explanation of the

reasons, and the information on which the amendment is based may be obtained by contacting the Contact Person set forth below.

The State and Consumer Services Agency has determined that the proposed amendment:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential impact on private persons, businesses or small businesses.

In making the proposed amendment, the State and Consumer Services Agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendment is proposed or would be as effective and less burdensome to affected persons than the proposed amendment.

All inquiries concerning the proposed amendment and any communication required by this notice should be directed to:

Vickie Ong, Manager  
State and Consumer Services Agency  
915 Capitol Mall, Suite 200  
Sacramento, California 95814  
(916) 653-2636  
vong@scsa.ca.gov

### **TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS**

#### **NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION**

#### **DIVISION OF WORKERS' COMPENSATION**

#### **Workers' Compensation—Workers' Compensation—Description of Disabilities, Primary Treating Physician Reporting Requirements, Schedule for Rating Permanent Disabilities**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, has adopted regulations on an emergency basis to implement the provisions of Labor Code section 4660 as amended,

and sections 4663 and 4664 as added to the Labor Code, by Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004).

The regulations adopted constitute Articles 2, 5 and 7 of Chapter 4.5, Subchapter 1, and Subchapter 1.6, of Title 8, California Code of Regulations, sections 9725, 9726, 9727, 9785, 9785.2, 9785.3, 9785.4, 9805, 10150, 10152, 10156, 10158, 10160, 10163, and 10165.5, and repealed sections 10151 and 10154. In the workers' compensation system, injured workers who are permanently disabled by industrial injuries or illness are entitled to indemnity. The regulations govern the indemnity awarded to permanently disabled injured workers based on percentages of permanent disability as set forth in a permanent disability rating schedule. The regulations implement, interpret, and make specific sections 4660, 4663 and 4664 of the Labor Code.

The emergency regulations listed below became effective on January 1, 2005, and will remain in effect for a period of 120 days from January 1, 2005. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

#### PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt Articles 2, 5 and 7 of Chapter 4.5, Subchapter 1, and Subchapter 1.6, of Title 8, California Code of Regulations, as follows:

Section 9725	Method of Measurement
Section 9726	Method of Measurement (Psychiatric)
Section 9727	Subjective Disability
Section 9785	Reporting Duties of the Primary Treating Physician
Section 9785.2	Form PR-2 "Primary Treating Physician's Progress Report"
Section 9785.3	Form PR-3 "Primary Treating Physician's Permanent and Stationary Report"
Section 9785.4	Form PR-4 "Primary Treating Physician's Permanent and Stationary Report"
Section 9805	Schedule for Rating Permanent Disabilities, Adoption, Amendment
Section 10150	Disability Evaluation Unit
Section 10151	Schedule for Rating Permanent Disabilities [Repealed]
Section 10152	Disability, When Considered Permanent
Section 10154	Permanent Disability Rating Determinations, Kinds [Repealed]
Section 10156	Formal Rating Determinations

Section 10158	Formal Rating Determinations as Evidence
Section 10160	Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee
Section 10163	Apportionment Referral (DEU Form 105)
Section 10165.5	Notice of Options Following Permanent Disability Rating (DEU Form 110)

#### TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date:** April 4, 2005

**Time:** 1:00 p.m.

**Place:** Auditorium

**The Governor Hiram Johnson  
State Office Building  
455 Golden Gate Avenue  
San Francisco, California 94102**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 1:00 p.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier.**

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

#### AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3.

Reference is to Labor Code sections 4061, 4061.5, 4062, 4600, 4600.3, 4603.2, 4636, 4660, 4662, 4663 and 4664.

INFORMATIVE DIGEST / POLICY  
STATEMENT OVERVIEW

These regulations are required by a legislative enactment—Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included Labor Code sections 4660 as amended, and sections 4663 and 4664 as added to the Labor Code.

Labor Code section 4660(a), as amended by Senate Bill 899, now provides that in determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

Labor Code section 4660(b)(1) provides that for purposes of the section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, 5th Edition (hereinafter "AMA Guides to the Evaluation of Permanent Impairment").

Labor Code section 4660(b)(2) provides that, for purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The Administrative Director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

Labor Code section 4660(c) requires the Administrative Director to amend the permanent disability rating schedule at least once every five years.

Labor Code section 4660(d) provides that the schedule shall promote consistency, uniformity, and objectivity, and that any revision made thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule. Labor Code section 4660(d) further provides that for compensable claims arising before January 1, 2005, the schedule as revised shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

Labor Code section 4660(e) requires the Administrative Director adopt regulations to implement the changes made to this section by Senate Bill 899 on or before January 1, 2005.

In Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004), the Legislature further repealed Section 4663, and added new Section 4663 which provides that apportionment of permanent disability shall be based on causation. Section 4663 requires the physician preparing a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability. Section 4663 further requires that in order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. The physician is required to make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of the injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. Section 4663 also requires that upon request, the injured worker claiming an industrial injury disclose all previous permanent disabilities or physical impairments.

Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004) also added new Section 4664 to the Labor Code. Section 4664 provides that the employer is only liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. It further provides that if the injured worker has received a prior award of permanent disability, it is conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury, and the presumption is a presumption affecting the burden of proof. Further, Labor Code section 4664 provides that the accumulation of all permanent disability awards issued for specified regions of the body is not to exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662, and prohibits a cumulative permanent disability rating over 100% for each individual injury sustained by an employee arising from the same industrial accident.

The proposed regulations clarify the method for determining percentages of permanent disability set forth in the Schedule for Rating Permanent Disabilities effective January 1, 2005, incorporating by reference the permanent disability rating schedule which incor-



porates the AMA Guides to the Evaluation of Permanent Impairment; define applicable terms related to the statutes; clarify when the permanent disability evaluations conducted by the physicians must be performed in accordance with the AMA Guides to the Evaluation of Permanent Impairment, and amend the forms used by the primary treating physician to comply with reporting duties as they are impacted by the requirements of the section 4660, including the form used by the primary treating physician to report on the permanent and stationary status of the injured worker's condition.

The aforementioned treating physician forms clarify which form is to be used with the 2005 permanent disability rating schedule and which are to be used with the 1997 permanent disability rating schedule. The forms also include requirements pertaining to the rating of impairments under the AMA Guides under section 4660, and apportionment sections 4663 and 4664.

The proposed regulations further clarify the manner in which the Disability Evaluation Unit, under the authority of the Administrative Director will issue permanent disability ratings consistent with the 2005 permanent disability rating schedule; clarify when a disability is considered permanent; and amend Disability Evaluation Unit's apportionment referral form (DEU Form 101) and DEU's Notice form after a permanent disability rating (DEU Form 110) to conform to the statutes.

The described regulations were adopted as emergency regulations, effective January 1, 2005. This rulemaking would make the regulations permanent. These proposed regulations implement, interpret, and make specific Sections 4660, 4663 and 4664 of the Labor Code as follows:

#### **1. Section 9725. Method of Measurement.**

This section provides that the method of measuring physical elements of a disability should follow the Report of the Joint Committee of the California Medical Association and Industrial Accident Commission, as contained in "*Evaluation of Industrial Disability*" edited by Packard Thurber, Second Edition, Oxford University Press, New York, 1960. It clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

#### **2. Section 9726. Method of Measurement (Psychiatric).**

This section provides that the method of measuring the psychiatric elements of a disability shall follow the Report of the Subcommittee on Permanent Psychiatric Disability to the Medical Advisory Committee of the California Division of Industrial Accidents, entitled

"The Evaluation of Permanent Psychiatric Disability," (hereinafter referred to as the "Psychiatric Protocols") as adopted, forwarded for adoption on July 10, 1987, and subsequent amendments and/or revisions thereto adopted after a public hearing. It clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

#### **3. Section 9727. Subjective Disability.**

This section provides that subjective disability should be identified by a description of the activity which produces the disability; the duration of the disability; the activities which are precluded and those which can be performed with the disability; the means necessary for relief. It further provides that the following terms are presumed to mean the following: a *severe* pain would preclude the activity precipitating the pain; a *moderate* pain could be tolerated, but would cause marked handicap in the performance of the activity precipitating the pain; a *slight* pain could be tolerated, but would cause some handicap in the performance of the activity precipitating the pain; a *minimal* (mild) pain would constitute an annoyance, but causing no handicap in the performance of the particular activity, would be considered as nonratable permanent disability. The section further clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

#### **4. Section 9785. Reporting Duties of the Primary Treating Physician.**

This section sets forth the reporting duties of the primary treating physician.

Subdivision 9785(a)(1) provides that the primary treating physician is the physician who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter. The subdivision further provides that the primary treating physician is the physician selected by the employer or the employee pursuant to Article 2 (commencing with section 4600) of Chapter 2 of Part 2 of Division 4 of the Labor Code, under the contract or procedures applicable to a Health Care Organization certified under section 4600.5 of the Labor Code, or in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616.

Subdivision 9785(a)(8) defines permanent and stationary status as the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

Subdivision 9785(b)(3) provides that if the employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, or if the employee objects to a decision made pursuant to Labor Code section 4610 to modify, delay, or deny a treatment recommendation, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062. It further provides that no other primary treating physician shall be designated by the employee unless and until the dispute is resolved.

Subdivision 9785(b)(4) provides that if the claims administrator disputes a medical determination made by the primary treating physician, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4610, 4061 and 4062.

Subdivision 9785(g) provides that when the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall, unless good cause is shown, report within 20 days from the date of examination any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury. The information may be submitted on the "Primary Treating Physician's Permanent and Stationary Report" form (Form PR-3) contained in section 9785.3 or section 9785.4, or in such other manner which provides all the information required by Title 8, California Code of Regulations, section 10606. It further provides that for permanent disability evaluations performed pursuant to the permanent disability evaluation schedule adopted on or after January 1, 2005, the primary treating physician's reports concerning the existence and extent of permanent impairment shall describe the impairment in accordance with the AMA Guides to the Evaluation on Permanent Impairment (Form PR-4). It also provides that Qualified Medical Evaluators and Agreed Medical Evaluators may not use DWC Form PR-3 or DWC Form PR-4 to report medical-legal evaluations. *Subdivision 9785(g) has been corrected for clarification purposes.*

#### **5. Section 9785.2. Primary Treating Physician's Progress Report (PR-2).**

Primary treating physicians are required to submit treatment reports, using either the Primary Treating Physician's Progress Report form (DWC Form PR-2)

set forth in Section 9785.2, or in a narrative format meeting specified content and format requirements.

Section 9785.2 provides that DWC Form PR-2 may also be used to submit a request for authorization pursuant to the requirements of Labor Code section 4610.

#### **6. Section 9785.3. Primary Treating Physician's Permanent and Stationary Report (PR-3).**

Primary treating physicians may submit their permanent and stationary reports using the Primary Treating Physician's Permanent and Stationary Report form (DWC Form PR-3) as set forth in Section 9785.3.

Section 9785.3 sets forth DWC Form PR-3, which is required to be used for ratings prepared pursuant to the 1997 Permanent Disability Rating Schedule. DWC Form PR-3 provides the requirements on apportionment consistent with sections 4663 and 4664. This language provides that effective April 19, 2004, apportionment of permanent disability shall be based on causation. It further provides that any physician who prepares a report addressing permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability, and in order for a permanent disability report to be complete; the report must include an apportionment determination. The determination must be made pursuant to Labor Code Sections 4663 and 4664 which are set forth in the form.

DWC Form PR-3 further provides questions to be answered in the affirmative or negative by the primary treating physician regarding whether the permanent disability was directly caused by an injury or illness arising out of and in the course of employment or whether the permanent disability was caused, in whole or in part by other factors besides this industrial injury or illness, including any prior industrial injury or illness.

If the primary treating physician determines that the answer to the second question as stated above is "yes," the primary treating physician is required to provide information regarding the approximate percentage of the permanent disability that is due to factors other than the injury or illness arising out of and in the course of employment; and a complete narrative description of the basis for the apportionment finding. DWC Form PR-3 further states that if the primary treating physician is unable to include an apportionment determination in his or her report, then he or she must state the specific reasons why such determination could not be made, and states that the primary treating physician may attach his or her findings and explanation on a separate sheet.

## 7. Section 9785.4. Primary Treating Physician's Permanent and Stationary Report (PR-4).

Section 9785.4 sets forth the DWC Form PR-4, which like the DWC Form PR-3, will be used by the primary treating physicians to submit their permanent and stationary reports. The DWC Form PR-4 will be used for ratings prepared pursuant to the 2005 Permanent Disability Rating Schedule and the AMA Guides to the Evaluation of Permanent Impairment. DWC Form PR-4 requires the reporting physician to set forth the impairment rating, requiring a report on the whole person impairment (WPI) rating for each impairment using the AMA Guides to the Evaluation of Permanent Impairment, and an explanation as to how the rating was derived. It further requires that the evaluation physician list the tables of the AMA Guides to the Evaluation of Permanent Impairment used, and the page numbers.

DWC Form PR-4 further requires the reporting physician to set forth an assessment of pain. If the burden of the worker's condition has been increased by pain-related impairment in excess of the pain component already incorporated in the WPI rating under Chapters 3–17 of the AMA Guides, 5th Edition, the evaluating physician is required to specify the additional whole person impairment rating (up to 3% WPI) attributable to such pain. For excess pain involving multiple impairments, attribute the pain in whole number increments to the appropriate impairments. The sum of all pain impairment ratings may not exceed 3% for a single injury.

DWC Form PR-4 further requires the reporting physician to set forth Functional Capacity Assessment. The evaluating physician is advised that the assessment of functional capacity is to be prepared by the treating physician, solely for the purpose of determining a claimant's ability to return to his or her usual and customary occupation, and will not to be considered in the permanent disability rating.

## 8. Section 9805. Schedule for Rating Permanent Disabilities, Adoption, Amendment.

This section provides that the method for the determination of percentages of permanent disability is set forth in the Schedule for Rating Permanent Disabilities, which has been adopted by the Administrative Director effective January 1, 2005, and which shall be amended at least once every five years. This section further provides that the schedule is adopted and incorporated by reference in its entirety as though it was set forth in the regulation, and it provides that the schedule adopts and incorporates by reference AMA Guides to the Evaluation of Permanent Impairment. This section also provides that the schedule shall be effective for dates of injury on or after January 1, 2005, and in accordance with subdivision (d) of

Labor Code section 4660, and that the schedule may be downloaded from the Division of Workers' Compensation website at

<http://www.dir.ca.gov/dwc/dwcrep.htm>.

The schedule for permanent disability rating is revised in order to: (1) incorporate the AMA Guides to the Evaluation of Permanent Impairment to describe the nature of a physical injury or disfigurement, (2) give consideration to an employee's diminished future earning capacity by formulating an adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies, and (3) promote consistency, uniformity, and objectivity. A description of the schedule is set forth below:

### SECTION 1—INTRODUCTION AND INSTRUCTIONS

#### I. Introduction

Generally, the introduction section of the Schedule for Rating Permanent Disabilities (hereinafter referred to as the "Schedule") indicates that the Schedule is adopted by the Administrative Director pursuant to Labor Code section 4660. It further states that the statute requires that the schedule be amended at least once every five years.

This section states that the extent of permanent disability that results from an industrial injury can be assessed once an employee's condition becomes permanent and stationary, and sets forth the definition of the term "permanent and stationary" as the point in time when the employee has reached maximal medical improvement (MMI), meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

This section further indicates that the calculation of a permanent disability is initially based on an evaluating physician's impairment rating, in accordance with the medical evaluation protocols and rating procedures set forth in the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment, 5th Edition*, which is incorporated by reference and thereafter referred to as the "AMA Guides."

This section also provides that initial impairment ratings are consolidated by body part and converted to a whole person impairment rating (hereinafter referred to as "impairment standard"). The impairment standard is then adjusted to account for the diminished future earning capacity, occupation and age at the time of injury to obtain a final permanent disability rating.



This section further clarifies that a disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity, while 100% represents permanent total disability. A rating between 0% and 100% represents permanent partial disability. Permanent total disability represents a level of disability at which an employee has sustained a total loss of earning capacity. Some impairments are conclusively presumed to be totally disabling. (Lab. Code, § 4662.)

This section also states that each rating corresponds to a fixed number of weeks of compensation. Compensation is paid based on the number of weeks and the weekly compensation rate, in accordance with Labor Code section 4658.

## II. Rating Procedures

### A. Use of the AMA Guides

This section of the Schedule indicates that the AMA Guides are used by evaluating physicians to determine the extent of an individual's impairment. The AMA Guides use different scales to describe impairment for different parts and regions of the body. For example, finger impairment is measured using a finger scale that can range from 0% to 100%. Other commonly used scales in the AMA Guides are the hand, upper extremity, foot, lower extremity and whole person scales.

It further states that the scales that correspond to different body regions are equivalent to a percentage of the whole person scale; therefore, these scales are converted to the whole person scale to determine the appropriate impairment rating. For example, an upper extremity impairment in the range of 0% to 100% is equivalent to a whole person impairment in the range of 0% to 60%. The upper extremity impairment is converted to a whole person impairment by multiplying by .6.

This section further indicates that when combining two or more ratings to create a composite rating, the ratings must be expressed in the same scale (this method is further explained in the section on Combining Disabilities).

It also indicates that the whole person impairment scale is referred to as WPI (whole person impairment). The upper and lower extremity scales are referred to as UE (upper extremity) and LE (lower extremity), respectively.

This section further provides that a final permanent disability rating is obtained only after the impairment rating obtained from an evaluating physician is adjusted for diminished future earning capacity, occupation and age at the time of injury.

### B. Calculation of Rating

This section of the Schedule indicates that the schedule utilizes an impairment number and an impairment standard. The impairment standard is then modified to reflect diminished future earning capacity, the occupation and the age at the time of injury.

#### 1. Impairment Number

This section of the Schedule indicates that the impairment number identifies the body part, organ system and/or nature of the injury and takes the form of "xx.xx.xx.xx". The first two digits correspond to the chapter number in the AMA Guides which address the body part/organ system. Subsequent pairs of digits further refine the identification of the impairment.

It provides the following example: Soft tissue lesion of the neck rated under the range of motion (ROM) method would be represented as follows:

15.	01.	02.	02
Spine	Neck	ROM method	Soft tissue lesion

The section further indicates that using Section 2 of the Permanent Disability Rating Schedule, an appropriate impairment number can be found for most impairments.

#### 2. Impairment Standard

This section of the Schedule provides that after identification of the appropriate disability number(s), the next step is to calculate all relevant impairment standard(s) for the impairments being evaluated. An impairment standard is a whole person impairment rating under the AMA Guides, provided by the evaluating physician.

It further indicates that if an impairment based on an objective medical condition is not addressed by the AMA Guides, physicians should use clinical judgment, comparing measurable impairment resulting from the unlisted objective medical condition to measurable impairment resulting from similar objective medical conditions with similar impairment of function in performing activities of daily living.

It further provides that a single injury can result in multiple impairments of several parts of the body. For example, an injury to the arm could result in limited elbow range of motion and shoulder instability. It further states that multiple impairments must be combined in a prescribed manner to produce a final overall rating.

This section of the Schedule states that it is not always appropriate to combine all impairment standards resulting from a single injury, since two or more impairments may have a duplicative effect on the function of the injured body part. The AMA Guides provide some direction on what impairments can be used in combination. Lacking such guidance, it is necessary for the evaluating physician to exercise his or her judgment in avoiding duplication.

This section of the Schedule further provides that the impairment standard is assumed to represent the degree of impairment for a theoretical average worker, i.e., a worker with average occupational demands on all parts of the body and at the average age of 39.

### 3. Adjustment for Diminished Future Earning Capacity (FEC)

This section of the Schedule provides that the adjustment for diminished future earning capacity (FEC) loss is applied to the impairment standard in accordance with procedures outlined in section 2 of the Schedule. An impairment must be expressed using the whole person impairment scale before applying the FEC adjustment.

This section of the Schedule further provides that the methodology and FEC Adjustment table is premised on a numerical formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The empirical data was obtained from the interim report, "Evaluation of California's Permanent Disability Rating Schedule" (December 2003), prepared by the RAND Institute for Justice. The result is that the body injury categories are placed into different ranges (based on the ratio of standard ratings to proportional wage losses). Each of these ranges will generate a FEC adjustment between 10% and 40% for each injury category.

#### (a) Summary of the Methodology:

This section of the Schedule summarizes the methodology for arriving at the adjustment for diminished future earning capacity formula as follows:

1. RAND data was used to establish the ratio of average California standard ratings to proportional wage losses for each of 22 injury categories. (*Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899*, December 2004, RAND Institute for Civil Justice, Seabury, Reville, Neuhauser, <http://www.rand.org/publications/WR/WR214/>.) These ratios are listed in Table B below.

2. The range of the ratios for all body injury categories is .45 to 1.81. This numeric range was divided into eight evenly spaced ranges. (See the Range of Ratios columns in Table A below.) Each

injury category will fall within one of these eight ranges, based on its rating/wage loss ratio.

3. A series of FEC adjustment factors were established to correspond to the eight ranges described above. (See column 4 of Table A below.) The smallest adjustment factor is a 1.1000 which will result in a 10% increase when applied to the AMA whole person impairment rating. The largest is 1.4000 which will result in a 40% increase. The six intermediate adjustment factors are determined by dividing the difference between 1.1 and 1.4 into seven equal amounts.

4. The formula for calculating the maximum and minimum adjustment factors is  $([1.81/a] \times .1) + 1$  where a equals the minimum or maximum rating/loss ratio from Table B below. AMA whole person impairment ratings for injury categories that correspond to a greater relative loss of earning capacity will receive a higher FEC adjustment. For example, a psychiatric impairment receives a higher FEC adjustment because RAND data shows that a relatively high wage loss corresponds to the average psychiatric standard permanent disability rating. A hand impairment would receive a lower FEC adjustment because RAND data shows a relatively low wage loss relative to the average psychiatric standard permanent disability rating.

This section of the Schedule further provides that the FEC rank and adjustment factors that correspond to relative earnings for the eight evenly-divided ranges are listed below in Table A. The ratio of earnings to losses and the corresponding rank for each injury category are listed below in Table B. To adjust an impairment standard for earning capacity, multiply it by the appropriate adjustment factor from the Table B and round to the nearest whole number percentage. Alternatively, a table is provided at the end of Section 2 of the Schedule which provides the earning capacity adjustment for all impairment standards and FEC ranks.

Table A

Range of Ratios		FEC Rank	Adjustment Factor
Low	High		
1.647	1.810	One	1.1000
1.476	1.646	Two	1.1429
1.305	1.475	Three	1.1857
1.134	1.304	Four	1.2286
0.963	1.133	Five	1.2714
0.792	0.962	Six	1.3143
0.621	0.791	Seven	1.3571
0.450	0.620	Eight	1.4000

Table B

Part of the Body	Ratio of Rating over Losses	FEC Rank
Hand/fingers	1.810	One
Vision	1.810	One
Knee	1.570	Two
Other	1.530	Two
Ankle	1.520	Two
Elbow	1.510	Two
Loss of grasping power	1.280	Four
Wrist	1.210	Four
Toe(s)	1.110	Five
Spine Thoracic	1.100	Five
General lower extremity	1.100	Five
Spine Lumbar	1.080	Five
Spine Cervical	1.060	Five
Hip	1.030	Five
General upper extremity	1.000	Five
Heart disease	0.970	Five
General Abdominal	0.950	Six
PT head syndrome	0.930	Six
Lung disease	0.790	Seven
Shoulder	0.740	Seven
Hearing	0.610	Eight
Psychiatric	0.450	Eight

The FEC Rank for the “Other” category is based on average ratings and proportional earning losses for the following impairments:

- Impaired rib cage
- Cosmetic disfigurement
- General chest impairment
- Facial disfigurement or impairment
- Impaired mouth or jaw
- Speech impairment
- Impaired nose
- Impaired nervous system
- Vertigo
- Impaired smell
- Paralysis
- Mental Deterioration
- Epilepsy
- Skull aperture

#### 4. Occupational Grouping

This section of the Schedule provides that after the rating is adjusted for diminished future earning capacity, it is then modified to take into account the requirements of the specific occupation that the employee was engaged in when injured.

It further provides that the Schedule divides the labor market into 45 numbered occupational groups. Each group is assigned a three-digit code called an occupational group number. The first digit of the code refers to the arduousness of the duties, ranking jobs

from 1 to 5 in ascending order of physical arduousness; the second digit separates occupations into broad categories sharing common characteristics; the third digit differentiates between occupations within these groups.

This section of the Schedule further indicates that the appropriate occupational group number can be identified by looking up the occupation in the list contained in Section 3A of the Schedule. Each job title is listed along with its corresponding group number. The appropriate occupation can generally be found listed under a scheduled or alternative job title. If the occupation cannot be found, an appropriate occupational group is determined by analogy to a listed occupation(s) based on a comparison of duties. This section further provides that the table Occupational Group Characteristics in Section 3C of the Schedule provides a description of each occupational group to facilitate the determination of a group number.

#### 5. Occupational Variant

This section of the Schedule references section 4 of the Schedule, which contains tables that cross-reference impairment numbers and occupational group numbers to produce an “occupational variant,” which is expressed as a letter. These tables are designed so that variant “F” represents average demands on the injured body part for the particular impairment being rated, with letters “E”, “D” and “C” representing progressively lesser demands, and letters “G” through “J” reflecting progressively higher demands.

#### 6. Occupational Adjustment

This section of the Schedule provides that after adjusting for diminished future earning capacity, the rating is adjusted next for occupation by reference to tables found in Section 5 of the Schedule. One can find the earning capacity-adjusted rating in the column entitled “Rating” and read across the table to the column headed with the appropriate occupational variant. The intersection of the row and column contains the occupation-adjusted rating.

#### 7. Age Adjustment

This section of the Schedule indicates that after all the previous steps have been completed, then the rating is adjusted to account for the worker’s age on the date of injury. Section 6 of the Schedule contains tables for determining the age adjustment. One can find the occupation-adjusted rating in the column entitled “Rating” and read across the table to the column with the injured worker’s age on the date of injury.

#### 8. Final Permanent Disability Rating

This section of the Schedule provides that the number identified on the age adjustment table represents the final overall permanent disability rating

percentage for a single impairment. (There is a reference to Subdivisions C.1. and C.2. of the schedule, page 11, concerning the combining of multiple impairments and disabilities.)

#### 9. Rating Formula

This section of the Schedule provides that the final rating is generally expressed as a rating formula, as in the following example:

15.01.02.02—8%-10%-470H-3%-11%

The section indicates that each component is described as follows:

15.01.02.02—Impairment number for cervical spine, soft tissue lesion

8%—Impairment standard

10%—Rating after adjustment for earning capacity

470—Occupational group number for Furniture assembler, heavy

H—Occupational variant

13%—Rating after occupationally adjustment

11%—Rating after age adjustment

### C. Additional Rating Procedures

#### 1. Formula for Combining Impairments and Disabilities

This section of the Schedule provides the formula for combining impairments and disabilities it provides that impairments and disabilities are generally combined using the following formula where a and b are the decimal equivalents of the impairment or disability percentages:

$$a + b(1-a)$$

This section of the Schedule further provides the following example: The result of combining 15% and 25% would be calculated as follows:

$$.15 + .25(1-.15)$$

$$.15 + .25(.85)$$

$$.15 + .2125 = .3625 = 36\%$$

This section further provides that the impairment ratings must be expressed in the same scale to be combined. For example, it would be inappropriate to combine 15% UE with 20% WPI. Likewise, one cannot combine an impairment rating with a disability rating.

This section of the Schedule indicates that except as specified in the section “Adjusting AMA Impairments and Combining Ratings,” when combining three or more ratings on the same scale into a single rating, combine the two largest first, rounding the result to the nearest whole percent. Then combine that result with the next largest rating, and so on, until all ratings are combined. Each successive calculation result must be rounded before performing the next.

#### 2. Adjusting AMA Impairments and Combining Ratings

This section provides that as used in the Schedule, the term “adjusting” refers to adjusting an AMA impairment rating for diminished future earning capacity, occupation and age.

The section further provides that except as specified below, all impairments are converted to the whole person scale, adjusted, and then combined to determine a final overall disability rating.

This section further indicates that multiple impairments involving the hand or foot are combined using standard AMA Guides protocols. The resulting upper or lower extremity impairment is converted to a whole person impairment and adjusted before being combined with other impairments of the same extremity.

It further provides that multiple impairments involving a single part of an extremity, e.g. two impairments involving a shoulder such as shoulder instability and limited range of motion, are combined at the upper extremity level, then converted to whole person impairment and adjusted before being combined with other parts of the same extremity. It notes that some impairments of the same body part may not be combined because of duplication.

This section states that impairments with disability numbers in the 16.01 and 17.01 series are converted to whole person impairment and adjusted before being combined with any other impairment of the same extremity.

It also states that impairments of an individual extremity are adjusted and combined at the whole person level with other impairments of the same extremity before combination with impairments of other body parts. For example, an impairment of the left knee and ankle would be combined before combination with an impairment of the opposing leg or the back.

This section further states that the composite rating for an extremity (after adjustments) may not exceed the amputation value of the extremity adjusted for earning capacity, occupation and age. The occupational variant used to rate an entire extremity shall be the highest variant of the involved individual impairments.

#### 3. Rating Impairment Based on Pain

This section of the Schedule provides that pursuant to Chapter 18 of the AMA Guides, a whole person impairment rating based on the body or organ rating system of the AMA Guides (Chapters 3 through 17) may be increased by up to 3% WPI if the burden of the worker’s condition has been increased by pain-related impairment in excess of the pain component already incorporated in the WPI rating in Chapters 3–17. (AMA, p. 573.)



It further provides that a physician may perform a formal pain-related impairment assessment if deemed necessary to justify the increase of an impairment rating based on the body or organ rating system. (See Section 18.3f of the AMA Guides starting on page 575.)

It also states that the maximum allowance for pain resulting from a single injury is 3% WPI, regardless of the number of impairments resulting from that injury.

This section of the Schedule further indicates that the addition of up to 3% for pain is to be made at the whole person level. For example, if an elbow impairment were to be increased by 3% for pain, the rating for the elbow would first be converted to the whole person scale, and then increased. The resultant rating would then be adjusted for diminished future earning capacity, occupation and age.

This section also indicates that in the case of multiple impairments, the evaluating physician shall, when medically justifiable, attribute the pain in whole number increments to the appropriate impairments. The additional percentage added for pain will be applied to the respective impairments as described in the preceding paragraph.

#### 4. Rating Psychiatric Impairment

This section of the Schedule provides that psychiatric impairment is to be evaluated by the physician using the Global Assessment of Function (GAF) scale. The resultant GAF score is then converted to a whole person impairment rating using the GAF conversion table.

##### (a) Instructions for Determining a GAF Score

This section of the Schedule sets forth step by step instructions for determining a GAF score.

##### (b) Global Assessment of Function (GAF) Scale

This section of the Schedule requires that psychological, social, and occupational functioning be considered on a hypothetical continuum of mental health-illness. It instructs that impairment in functioning due to physical (or environmental) limitations not be included. It further sets forth the GAF scale.

##### (c) Converting the GAF Score to a Whole Person Impairment

This section of the Schedule sets forth a table which converts the GAF score to a whole person impairment. It instructs the reader to locate the GAF score in the table and read across to determine the corresponding whole person impairment score.

### SECTION 2—IMPAIRMENT NUMBER/EARNING CAPACITY ADJUSTMENT

Section 2 replaces the disability number section 2 in the 1997 Permanent Disability Rating Schedule with impairment numbers. It further replaces the disability descriptions of Section 2 of the 1997 Permanent

Disability Rating Schedule with impairment descriptions. Further, Section 2 adds the future earning capacity rank for each listed impairment. The introduction in Section 2 states that if the impairment (based on an objective medical condition) is not addressed by the AMA Guides, the user is required to choose the closest applicable impairment number. A table at the end of Section 2 enables the user to apply the earning capacity adjustment to any impairment standard rating.

### SECTION 3—OCCUPATIONS AND GROUP NUMBERS

This section of the Schedule remains the same as the 1997 Permanent Disability Rating Schedule, except that the following occupations and group numbers have been added:

Alarm Service Technician (business ser.)—380  
 Auto Painter (any industry)—321  
 Baggage screener, airport (air transport.)—212  
 Bicycle messenger—(business ser.)—493  
 Bounty hunter (business ser.)—390  
 Bowler, professional (amuse. and rec.)—493  
 Cable car operator (r.r. transportation)—350  
 CAD designer—(profess. & kindred)—120  
 Card dealer (amusement and rec.)—211  
 Cartographer (prof. & kindred)—120  
 Checker, warehouse (retail trade)—360  
 Coffeemaker (hotel & rest.)—322  
 Community organization worker (social serv.)—111  
 Community service officer, patrol (social serv.)—250  
 Computer set-up person (business serv.)—320  
 Courier (any industry)—250  
 Dietary Aide, Hospital Services (medical ser.)—322  
 Fire inspector (government serv.)—490  
 Flagger, Traffic Control (construction)—213  
 Glass blower, hand (glass mfg.)—221  
 Golf instructor (amuse. and rec.)—390  
 Golfer, professional (amuse. and rec.)—493  
 Hand Labeler (any ind.)—211  
 Inmate, laborer (any industry)—460  
 Loader/unloader (any industry)—460  
 Newscaster (radio-tv broad.)—210  
 Nurse case manager (medical services)—212  
 Painter, traffic line (construction)—350  
 Patrol officer, volunteer (government serv.)—250  
 Pit boss/floor person (amusement & rec.)—214  
 Produce Clerk, Retail (retail trade)—360  
 School Principal (education)—212  
 Set-up person/trade show (retail trade)—360  
 Ski instructor (amuse. and rec.)—493  
 Ski lift operator (amuse. and rec.)—240  
 Ski patroller (amuse. and rec.)—590  
 Smog Technician (automotive ser.)—370  
 Surgical technician (medical serv.)—212

Ticket inspector, transportation  
(r.r. transportation)—213  
Truss Builder, Construction (construction)—380  
Waysman (ship-boat mfg.)—481  
Wind Turbine Technician (construction; utilities)—  
482

The section further provides for a reclassification of the occupational group number of aerobic instructor (amusement and rec.)—from 390 to 493

This section of the Schedule has been reorganized. Part A contains an alphabetized list of occupations with their scheduled occupational group numbers. Part B contains an occupational group chart which illustrates the overall system for classifying occupations into groups. Part C contains a description and sample occupations of each group.

#### SECTION 4—OCCUPATIONAL VARIANTS

This section remains the same as it is in the 1997 Permanent Disability Rating Schedule.

#### SECTION 5—OCCUPATIONAL ADJUSTMENT

This section remains the same as it is in the 1997 Permanent Disability Rating Schedule.

#### SECTION 6—AGE ADJUSTMENT

This section remains the same as it is in the 1997 Permanent Disability Rating Schedule.

#### SECTION 7—EXAMPLES

This section sets forth rating examples illustrating all the basic components of disability rating, including converting AMA scales, adjusting for diminished future earning capacity, occupation and age.

#### SECTION 8—COMBINED VALUES CHART

This section provides the “Combined Values Chart,” at pp. 604–606 of the AMA Guides.

### 9. Section 10150. Disability Evaluation Unit.

This section provides that the Disability Evaluation Unit, under the direction and authority of the Administrative Director, will issue permanent disability ratings as required under this subchapter utilizing the Schedule for Rating Permanent Disabilities adopted by the Administrative Director. It further provides that the Disability Evaluation Unit will prepare the following kinds of rating determinations: (a) Formal rating determinations; (b) Summary rating determinations; (c) Consultative rating determinations; and (d) Informal rating determinations.

### 10. Section 10151. Schedule for Rating Permanent Disabilities.

This section is repealed as redundant.

### 11. Section 10152. Disability, When Considered Permanent.

This section provides that a disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

### 12. Section 10154. Permanent Disability Rating Determinations, Kinds.

This section is repealed as redundant.

### 13. Section 10156. Formal Rating Determinations.

This section provides that a formal rating determination will be prepared by the Disability Evaluation Unit when requested by the Appeals Board or a Workers’ Compensation Administrative Law Judge on a form specified for that purpose by the Administrative Director. The form will provide for a description of the disability to be rated, the occupation of the injured employee, the employee’s age at the time of injury, the date of injury, the formula used, and a notice of submission in accordance with Appeals Board Rules of Practice and Procedure.

### 14. Section 10158. Formal Rating Determinations As Evidence.

This section provides that formal rating determinations prepared by disability evaluators shall be deemed to constitute evidence only as to the relation between the disability or impairment standard(s) described and the percentage of permanent disability.

### 15. Section 10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.

This section sets forth procedures for summary rating determinations and comprehensive medical evaluations of unrepresented employees. The pertinent subdivisions below have been amended to conform to the statutes.

Subdivision 10160(c) provides that the insurance carrier, self-insured employer or injured worker shall complete a Request for Summary Rating Determination (DEU Form 101), a copy of which shall be served on the opposing party. The requesting party shall send the request, including proof of service of the request on the opposing party, to the Qualified Medical Evaluator together with all medical reports and medical records relating to the case prior to the scheduled examination with the Qualified Medical Evaluator. The request shall include the appropriate address of the Disability Evaluation Unit. A listing of all of the offices of the Disability Evaluation Unit, with each office’s area of jurisdiction, will be

provided, upon request, by any office of the Disability Evaluation Unit or any Information and Assistance Office.

Subdivision 10160(d) provides that when a summary rating determination has been requested, the Qualified Medical Evaluator shall submit all of the following documents to the Disability Evaluation Unit at the location indicated on the DEU Form 101 and shall concurrently serve copies on the employee and claims administrator:

Subdivision 10160(f) provides that any request for the rating of a supplemental comprehensive medical evaluation report shall be made no later than twenty days from the receipt of the report and shall be accompanied by a copy of the correspondence to the evaluator soliciting the supplemental evaluation, together with proof of service of the correspondence on the opposing party.

#### **16. Section 10163. Apportionment Referral**

Section 10163 is a Disability Evaluation Unit Form (DEU Form 105) which is used by the Presiding Workers' Compensation Administrative Law Judge to request that the DEU evaluate a report indicating that part of or all of the permanent disability may be subject to apportionment. Pertinent portions of the DEU Form 105 have been amended to conform to the statutes.

DEU Form 105 provides that the formal medical evaluation report attached to the form indicates that part or all of the permanent disability may be subject to apportionment pursuant to Labor Code Section 4663 and/or Labor Code Section 4664, and requests that the Workers' Compensation Administrative Law Judge determine whether the apportionment is inconsistent with the law. It also revised the provision with respect to a Workers' Compensation Administrative Law Judge's referral of a report back to a medical evaluator to clarify this procedure and to eliminate reference to the word "evidence," which term is inappropriate given the informal, non-judicial nature of this procedure. Thus, the sentence "[i]f you refer the report back to the medical evaluator for correction or clarification, and you receive no response within 30 days, please make a determination based on the available evidence," was deleted and replaced with the following language: "If you believe the apportionment is inconsistent with the law, you may refer the report back to the medical evaluator for correction or clarification. If you receive no response from the medical evaluator within 30 days from your request, please make your determination based on the original report."

DEU Form 105 further provides that after checking the appropriate space as to whether the apportionment is consistent with the law or not, the Workers'

Compensation Administrative Law Judge is required to sign and date the bottom of this form and return it with the medical report to the DEU office listed on the form.

#### **17. Section 10165.5. Notice of Options Following Permanent Disability Rating (DEU Form 110)**

DEU Form 110 is a form used by DEU to notify the injured worker of his or her options following a permanent disability rating determination. Pertinent portions of the DEU Form 110 have been amended to conform to the statutes.

The first paragraph of DEU Form 110 provides that this is a permanent disability rating determination (Rating) prepared by the State of California Disability Evaluation Unit within the Division of Workers' Compensation. It describes the employee's percentage of permanent disability based a report by the employee's doctor, potential loss of future earning capacity, age, and the type of work at the time of injury.

The first paragraph of DEU Form 110 further provides that if the injured employee disagrees with the rating because he or she believes that the rating was improperly calculated or that the doctor failed to address any or all issues or failed to properly rate his or her impairment, he or she may request administrative review of the rating within 30 days of receipt of the rating, from the Administrative Director of the Division of Workers' Compensation. It further provides that in some cases, he or she may be entitled to an additional medical evaluation or a different medical specialist. It indicates that his or her request should include a copy of the rating and a copy of the report from the doctor. A copy of the request must be sent to the employee's claims adjustor.

The second paragraph of DEU Form 110 under the heading "Special Notice to Unrepresented Injured Workers" provides that if the injured employee has questions about whether to request administrative review of his or her rating or whether another medical evaluation is appropriate, he or she should contact the local Information and Assistance Officer listed in the state government section of his or her telephone book under Department of Industrial Relations, Division of Workers' Compensation. The term "administrative review" of a rating replaces the former term "reconsideration" of a rating, in order to avoid confusion with the procedure for seeking reconsideration of a Workers' Compensation Administrative Law Judge's decision.



# DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Permanent partial disability awards for injured employees will be determined under the 2005 Permanent Disability Rating Schedule, which is based on objective medical evidence rated under the AMA Guides to the Evaluation of Permanent Impairment and adjustments for diminished future earning capacity, occupation and age. The new schedule eliminates the use of subjective components of disability of the 1997 Permanent Disability Rating Schedule, which will result in more consistent, uniform and objective ratings that more accurately reflect the work-related medical condition/injury.
- All employers in the state of California that are governed by the California workers' compensation statute, including the State itself and every local agency, are required to pay permanent partial disability indemnity to injured workers whose injury results in permanent partial disability. Because of the legal requirement to pay permanent partial disability indemnity to injured workers, as many as 10,000 California businesses may be impacted. Approximately 500 insurance carriers and 3,000 self-insured employers, which include private corporations and government agencies, may also be impacted.
- Generally, benefits will accrue to all businesses and other entities that employ individuals in the State of California because the permanent disability rating schedule is being revised in a manner intended to promote consistency, uniformity, and objectivity based on the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, and taking into account the occupation, age and diminished future earning capacity of the injured worker. It is estimated there will be a 2.5% decrease in the

overall pure premium rate level due to revisions in the schedule in the number of weeks of permanent disability indemnity awarded for specific ranges of percentages of impairment. (See, Labor Code section 4658; Department of Insurance, Decision, File No. RH-04039178.) Further benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.

- There will be some small costs related to training insurers and physicians to use the AMA Guides to Evaluation of Permanent Impairment, updating computer systems to incorporate the changes of the revised permanent disability rating schedule, and purchase of the AMA Guides to Evaluation of Permanent Impairment, at the cost of \$128.00 each.

## FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: State government operates under the same workers' compensation system as all other employers in California. There will be a decrease in permanent partial disability costs due to revisions in the schedule in the number of weeks of permanent disability indemnity awarded for specific ranges of percentages of impairment. (See, Labor Code section 4658; Department of Insurance, Decision, File No. RH-04039178.) Further benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the



regulations apply to all employers and payors, both public and private, and not uniquely to local governments.

- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: Local government entities operate under the same workers' compensation system as all other employers in California. There will be a decrease in permanent partial disability costs due to revisions in the schedule in the number of weeks of permanent disability indemnity awarded for specific ranges of percentages of impairment. (See, Labor Code section 4658; Department of Insurance, Decision, File No. RH-04039178.) Further benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.

#### EFFECT ON SMALL BUSINESS

- The Administrative Director has determined that the proposed regulations will result in minor initial costs to small businesses. All employers in the state of California that are governed by the California workers' compensation statute, including small businesses, are required by law to provide workers' compensation benefits, and specifically required to pay permanent partial disability indemnity to injured workers whose injury results in permanent partial disability. These costs may be related to training insurers and physicians to use the AMA Guides to Evaluation of Permanent Impairment, updating computer systems to incorporate the changes of the revised permanent disability rating schedule, and purchase of the AMA Guides to Evaluation of Permanent Impairment, at the cost of \$128.00 each.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATION

Pursuant to Government Code section 11346.45, prior to the emergency adoption of the regulations, the Administrative Director held several stakeholder meetings to which the public was invited, at which proposed regulations were discussed, and at which a representative group of interested parties was present.

In addition, the text of the proposed regulations and draft of the permanent disability rating schedule were made available for pre-adoption public comment period through the Division's Internet message board (the DWC Forum).

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

In addition, this Notice, the Initial Statement of Reasons, and the text of regulations may be accessed and downloaded from the Department of Industrial Relations' Internet site at [www.dir.ca.gov](http://www.dir.ca.gov) under the heading "Rulemaking-proposed regulations." Any subsequent changes in regulation text, and the Final Statement of Reasons will be available at that Internet site when made.

#### PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing. Any person may submit written comments on the proposed regulation, prior to the public hearing to:

Ms. Kathleen Llemos  
Division of Workers' Compensation—9th Floor  
Post Office Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov)

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on April 4, 2005. Equal weight will be accorded to oral and written materials.

**COMMENTS TRANSMITTED BY  
E-MAIL OR FACSIMILE**

Due to the inherent risks of non-delivery by facsimile transmission and email transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission or email transmission also be submitted by regular mail.

**Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

**AVAILABILITY OF RULEMAKING FILE  
AND LOCATION WHERE RULEMAKING  
FILE MAY BE INSPECTED**

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation  
455 Golden Gate Avenue, Ninth Floor  
San Francisco, California 94102

**AVAILABILITY OF RULEMAKING  
DOCUMENTS ON THE INTERNET**

Documents concerning this proceeding are available on the Division's website: [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the "Permanent Disability Rating Schedule" rulemaking link.

**CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Kathleen Llemos  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

**BACK-UP CONTACT PERSON / CONTACT  
PERSON FOR SUBSTANTIVE QUESTIONS**

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: Minerva Krohn, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

**AVAILABILITY OF CHANGES  
FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulation as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulation is adopted. The modified text will be made available on the Division's website: [www.dir.ca.gov](http://www.dir.ca.gov) and may be located by following the direction provided above.

**AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: [www.dir.ca.gov](http://www.dir.ca.gov) by following the directions provided above.

**AUTOMATIC MAILING**

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted on a permanent basis, the proposed regulation will remain in effect at Title 8, California Code of Regulations, sections 9725 et seq.

**TITLE 11. DEPARTMENT  
OF JUSTICE**

**NOTICE OF PROPOSED  
REGULATORY ACTION**

**Suppression of Incomplete  
Criminal History Information**

NOTICE IS HEREBY GIVEN that the Department of Justice (Department) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at one of the hearings to be held at Department of Water Resources Building Auditorium, 1416 9th Street, Sacramento, California on March 28, 2005 at 9:00 a.m. and at Ronald Reagan State Building Auditorium, 300 South Spring Street, Los Angeles on March 30, 2005 at 9:00 a.m. Written comments, including those sent by facsimile, or email to the

addresses listed under Contact Person in this Notice, must be received by the Department at 4949 Broadway, Sacramento, California not later than 5:00 p.m. on **March 21, 2005** or must be received by the Department at the hearing. The Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submitted written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

#### AUTHORITY/REFERENCE

Pursuant to the authority vested by Section 11077 of the Penal Code, and to implement, interpret or make specific Sections 10911.5, 44237, 44332.6, 44341(c), 44830.1, 45125, 45125.01, and 45125.1, Education Code; Sections 11400.20, 11425 through 11425.60, 15376 and 15378(b), Government Code; Sections 1265.5, 1338.5, 1502, 1522, 1568.09, 1569.17, 1569.171, 1596.603, 1596.750, and 1596.871, Health and Safety Code; Sections 11075 through 11081, 11102.1, 11105, 11105.1 through 11105.75, 11112, 11112.1, 11112.2, 13102, 13150, 13151, and 13154, Penal Code; Section 2342, Probate Code; Section 5164, Public Resources Code; Sections 12517.3, 12800, 12800(a), and 13000, Vehicle Code; Sections 4689.2, 15660, and 16501, Welfare and Institutions Code; *Central Valley Chapter 7th Step Foundation v. Younger*, (1979) 95 Cal. App. 3d 212; and *Central Valley Chapter 7th Step Foundation v. Younger*, (1979) 214 Cal. App. 145, the Department of Justice is considering additions to Chapter 7, Division 1 of Title 11 of the California Code of Regulations, by the addition of Article 2, Suppression of Incomplete Criminal History Information, as follows:

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Justice (DOJ) is the repository for all California criminal history records. The DOJ has a responsibility to ensure that records are complete and accurate. The DOJ has an obligation to attempt to obtain incomplete and/or missing disposition information, which is missing from arrest information in DOJ's records, from those criminal justice agencies that are required to report arrest and disposition information to the Department.

Existing law requires the DOJ to provide state summary criminal history information to authorized

entities for employment, licensing, and certification purposes in accordance with strict dissemination criteria specified by statute and court decisions.

Each year there are approximately 1,500 arrests for which the Department is unable to obtain missing disposition information necessary to respond to an authorized agency's request for criminal history record information. Through no fault of the requesting entity or applicant, when an arrest disposition is not available, the entire criminal history may be withheld and no response provided for the criminal history record check. Failure to respond delays licensing or hiring decisions, and may result in lost job(s) and/or missed career opportunities, creating hardships not only for the businesses trying to meet their needs, but also for the individuals seeking employment, licensure or certification.

The Department proposes to adopt five regulations that will make specific the steps that the Department will take to obtain disposition information corresponding to each arrest reported. These regulations will also make clear what criminal history information, if any, will be furnished to an authorized entity for employment, licensing or certification purposes when complete criminal history information is not available.

- Section 720 refers to the title and scope of the regulations.
- Section 721 sets forth the definitions of the following terms: Attorney General, authorized entity, criminal justice agencies, Department, disposition, FBI, and state summary criminal history.
- Section 722 identifies the process DOJ will use to obtain complete criminal history information. The Department will contact the appropriate agency to obtain complete state, federal and FBI criminal history information, as necessary. The Department shall query the arresting agency, the prosecuting agency and the court or probation agency, as applicable. If the Department is unable to obtain the missing disposition information, the Department shall also query any other criminal justice agencies that might possess the information by available automated systems or direct contact to those entities identified by the FBI.
- Section 723 sets forth the circumstances under which the Department discloses information to, or suppresses information from, an authorized entity in the event that the Department is unable to obtain complete criminal history information. If a section 722 search is conducted, and the disposition information is deemed to be unavailable, the Department shall not be required to repeat the search in response to any future requests. Unless otherwise authorized by law, incomplete criminal history information shall not be disclosed for a



particular arrest but all other authorized criminal history information shall be disclosed. Also, where only an arrest record exists, but there is no disposition information, the Department shall suppress the arrest information and provide the requesting agency with a response that no criminal history information exists.

- Section 724 specifies that DOJ will maintain an audit trail to document its efforts to obtain missing disposition information. The audit trail documentation will include the identity of the person conducting the query, the date of query for each agency and/or database queried, and the results of those efforts.

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The proposed regulations will result in neither additional costs nor significant savings to public agencies and will not impact federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: The proposed regulations will not result in nondiscretionary costs/savings to local agencies.

Local Mandate: The proposed regulations will not create any local mandates.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: The proposed regulations will not have a significant impact on any local agency or school districts and will not require any reimbursable costs. Local agencies and school districts that submit fingerprints for the purpose of obtaining state summary criminal history information for applicants for employment, licensing, child placement and certification purposes presently do so based on current statutory mandates.

Business Impact: The Department made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Department determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Department is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESSES

The Department made an initial determination that the proposed regulations would not adversely affect small businesses and may actually help them. Currently those small businesses that are authorized to receive summary criminal history information, through no fault of the small business, may not receive a response to its request when an arrest disposition is not available because the entire criminal history may be withheld. Failure to receive a response may delay licensing or hiring decisions, and may result in lost job(s) and/or missed career opportunities, creating hardships not only for the businesses trying to meet their needs, but also for the individuals seeking employment, a licensure or certification.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department has determined that no reasonable alternative to the regulation either would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The Department has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, or prior to the hearing upon request, from the Contact Person at the address listed below.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.



#### CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Martha L. Cook  
California Department of Justice  
4949 Broadway, Room H121  
Sacramento, CA 95820  
Telephone at 916-227-3809  
Fax at 916-227-2000  
Email at [martha.cook@doj.ca.gov](mailto:martha.cook@doj.ca.gov)

The backup contact person is:

Wendy Welenofsky  
California Department of Justice  
4949 Broadway, Room G110  
Sacramento, CA 95820  
Telephone at 916-227-5771  
Fax at 916-227-4589  
Email at [wendy.welenofsky@doj.ca.gov](mailto:wendy.welenofsky@doj.ca.gov)

#### WEBSITE ACCESS

Materials regarding this proposal can be found at:  
<http://ag.ca.gov/fingerprints/regulations.htm>

### TITLE 17. DEPARTMENT OF HEALTH SERVICES

#### ACTION

Notice of Emergency Rulemaking  
Title 17, California Code of Regulations

#### SUBJECT

Medical Laboratory Technician Licensing Standards, **R-13-03E**

The California Department of Health Services (Department) has adopted the regulations described in this notice on an emergency basis, and they are now in effect.

#### PUBLIC PROCEEDINGS

The Department will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments, or contentions (hereinafter "comments") relevant to the action described in this notice.

#### CONTACTS

**In any inquiries or written comments, please identify the action by using the Department regulation control number, R-13-03E:**

#### COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on March 21, 2005, which is hereby designated as the close of the written comment period. Comments

received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov) (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-13-03E" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments" link to the Department website at <http://www.dhs.ca.gov/regulation/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

#### TO OBTAIN THE REGULATIONS REFERENCED IN THIS NOTICE:

1. Materials regarding these regulations (including this public notice, the regulation text, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then clicking on the "Select DHS regulations" button.
2. In order to request a copy of this regulation package be mailed to you, please call (916) 440-7695 or email [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov).

#### INQUIRIES

Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Dr. Karen L. Nickel, Ph.D., Chief of the Laboratory Field Services Branch at (510) 873-6328.

All other inquiries concerning the action described in this notice may be directed to Charles E. Smith of the Office of Regulations at (916) 440-7690, or to the designated backup contact person, Barbara Gallaway, at (916) 440-7689.

Upon request, this document will be made available in Braille, large print, and audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write: Charles E. Smith of the

Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7690 and/or California Relay at 711/1-800-735-2929.

# INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill (SB) 1809 (Machado), chapter 356, statutes of 2002, requires the Department to adopt emergency medical laboratory technician (MLT) licensing regulations. Using the authority of the newly enacted legislation at BPC 1260.3 and existing law at BPC 1208(a), the Department has set standards to license MLTs. The Department's Clinical Laboratory Technology Advisory Committee (CLTAC) has been closely involved in helping set these standards, and national standards adopted by the National Accrediting Agency Clinical Laboratory Sciences (NAACLS) and the American Society of Clinical Pathologists (ASCP) for MLT certification have been incorporated.

The MLT is recognized as a mid-level testing person in clinical laboratories in most states of the United States, but not California. A severe labor shortage of clinical laboratory testing personnel in California has been a driving force for licensing MLTs in this state. These regulations set education, training and/or experience, and examination standards to allow licensure of this new category of testing personnel in California. The education required is equivalent to an associate-level degree in science. The training required is at least 26 weeks of practical experience in waived and moderate complexity testing in chemistry, hematology, microbiology and immunology. Standards have been set for programs that would provide didactic and practical clinical training for MLT candidates, and alternate pathways for training are given. Standards to approve certifying examinations that test the knowledge and skills expected of an MLT are specified. These standards shall be used by the Department to eventually approve national certification examinations for licensure of all clinical laboratory personnel, replacing state-administered examinations. The regulation also clarifies the scope of practice of MLTs, their authority to report their own test results and their need for supervision.

Specifically, the changes to Title 17 of the California Code of Regulations (CCR) would:

1. Adopt new Sections 1029.117 to define a "Medical Laboratory Technician" and 1029.134 to explain what "practical experience" is as used in these regulations;
2. Adopt new Section 1031.8 to specify the conditions under which the Department would approve the examination of a certifying organization that would be acceptable for licensure requirements under chapter 3;

3. Adopt new Section 1031.9 to specify the conditions under which the Department would renew the approval of a certifying organization to administer examinations acceptable for licensure purposes;
4. Adopt new Section 1032.5 to specify the education, training/experience and examination requirements for a person to be licensed as a MLT in California, and to explain their scope of practice;
5. Adopt new Section 1035.3 to specify acceptable MLT training program standards;
6. Adopt new Section 1035.4 to specify the timeframes for approval of training programs.

## AUTHORITY

Section 1224, Business and Professions Code, and Section 100275, Health and Safety Code.

## REFERENCE

Sections 1202.5, 1204, 1206, 1206.5, 1207, 1208, 1209, 1210, 1222, 1222.5, 1228, 1242, 1242.5, 1243, 1246, 1260, 1260.3, 1261, 1261.5, 1262, 1262.5, 1263, 1264, 1269, 1270, 1275, 1286, 1300, 1302 and 1320, Business and Professions Code.

## FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: No fiscal impact exists.
- B. Fiscal Effect on State Government: Additional expenditures of approximately \$0.00 in the current State Fiscal year. It is anticipated that State agencies will request an increase in the currently authorized budget level for the amount of \$300,000 for the fiscal year 2005-06. It will take 3-5 years before the full fiscal impact of this action is realized.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.
- D. All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the emergency action: Private persons employed or seeking employment as Medical Laboratory Technicians will incur a \$97 fee for new licenses and an annual renewal fee of \$69.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: No fiscal impact exists.

## DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California. The regulations will create new jobs for Medical Laboratory Technicians within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California. The regulations will allow the expansion of current businesses in the State of California.

The Department has determined that the regulations would not affect small business because Medical Laboratory Technicians will be employed in larger laboratories employing clinical laboratory scientists who will provide the required supervision. Medical Laboratory Technicians are not authorized in these regulations to work independently, as in a small laboratory.

The Department has determined that the regulations will have no impact on housing costs.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's

Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

#### ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Charles E. Smith, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7690 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten working days prior to a public hearing.

### TITLE 18. BOARD OF EQUALIZATION

ADOPT REGULATIONS 1160, 1214, 1331.2, 1425, 2232.1, 2333, 2425, 2520, 3005, 3203, 3303, 3503, 4031.1, and 4905 PERTAINING TO  
ELECTRONIC FUNDS TRANSFER UNDER  
SPECIAL TAXES LAWS

#### NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, section 25299.42 of the Health and Safety Code, and sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250, of the Revenue and Taxation Code, proposes to **adopt** Regulation 4905, in Title 18, Division 2, Chapter 9.9, of the California Code of Regulations, relating to Electronic Funds Transfer which will apply electronic funds transfer payment requirements to the separate tax and fee laws (Special Tax Laws) under which the Board collects more than



twenty-five separate taxes and fees; also, in Title 18, Division 2 of the California Code of Regulations to **adopt** Regulations 1160 (Motor Vehicle Fuel Tax and Aircraft Jet Fuel Tax) 1214 (Underground Storage Tank Maintenance Fee), 1331.2 (Use Fuel Tax), 1425 (Diesel Fuel Tax) 2232.1 (Oil Spill Response Fee and Oil Spill Prevention and Administration Fees), 2333 (Energy Resources Surcharge), 2425 (Emergency Telephone Users Surcharge), 2520 (Alcoholic Beverage Tax), 3005 (Childhood Lead Poisoning Prevention Fee, Hazardous Substances Tax, Occupational Lead Poisoning Prevention Fee), 3203 (Marine Invasive Species Management Fee (Ballast Water Management Fee)), 3303 (Integrated Waste Management Fee, 3503 (California Tire Fee, Electronic Waste Recycling Fee, Natural Gas Surcharge, Water Rights Fees)), and 4031.1 (Cigarette and Tobacco Products Taxes).

A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Tuesday, March 22, 2005. At the hearing, any person interested may present statements or arguments orally. The Board will consider written statements or arguments if received by March 22, 2005.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Property and Special Taxes Department, in addition to administration of Property Tax, administers the Special Tax Laws. Many of these laws contain similar administrative provisions. Proposed Regulation 49052 concerning payment by electronic funds transfer under specified circumstances, clarifies the law and makes consistent the requirements on taxpayers among the various Special Tax Laws programs. Under each of the Special Tax Laws' existing regulations, the proposed administrative regulations in new Chapter 9.9 will be cross-referenced.

#### Discussion of Electronic Funds Transfer (Proposed Regulation 4905)

The Property and Special Taxes Department believes that it would ease the taxpayers' burdens of compliance with multiple tax laws if the administrative provisions in each of the Special Tax Laws administered by the Board imposed the same or substantially the same requirements. Thus, if the statutory requirements for payment by electronic funds transfer are the same for each of the Special Tax Laws administered, then the regulations clarifying those requirements should also be substantially the same. For that reason, the proposal adopts section 4905 on Electronic Funds Transfer which will apply to all of the Special Tax Laws programs in the Property and Special Taxes Department, listed on the chart attached

to this notice as Exhibit A. The language of section 4905 is substantially the same as the Sales and Use Tax Regulation section 1707 (Electronic Funds Transfer). Not only will the proposed changes enhance consistency among the tax programs as currently administered by the Board; they will facilitate maintenance of consistent and clear regulations in the future. When future regulatory changes are made to the Sales and Use Tax regulations concerning electronic funds transfer, the same changes can be made by amending the Special Tax Laws' administrative regulations, instead of amending multiple separate special taxes regulations.

#### Proposed Cross-Reference regulations

The Board also proposes to cross-refer tax and feepayers to the general administrative requirements for electronic funds transfer by adding to Title 18, Division 2 of the California Code of Regulations sections 1160 (Motor Vehicle Fuel Tax and Aircraft Jet Fuel Tax); 1214 (Underground Storage Tank Maintenance Fee); 1331.2 (Use Fuel Tax); 1425 (Diesel Fuel Tax); 2232.1 (Oil Spill Response Fee and Oil Spill Prevention and Administration Fees); 2333 (Energy Resources Surcharge); 2425 (Emergency Telephone Users Surcharge); 2520 (Alcoholic Beverage Tax); 3005 (Childhood Lead Poisoning Prevention Fee, Hazardous Substances Tax, Occupational Lead Poisoning Prevention Fee); 3203 (Marine Invasive Species Management Fee (formerly Ballast Water Management Fee)); 3303 (Integrated Waste Management Fee); 3503 (California Tire Fee, Electronic Waste Recycling Fee, Natural Gas Surcharge, Water Rights Fees); and 4031.1 (Cigarette and Tobacco Products Taxes).

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulations do not impose a mandate on local agencies or school districts. Further, the Board has determined that the regulations will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings on Federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the State Board of Equalization makes an initial determination that the adoption of the regulations will clarify the application of the Special



Tax Laws and will have no significant statewide adverse economic impact directly affecting businesses.

The adoption of the regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed regulation may affect small business.

The regulations as proposed will not be detrimental to California businesses in competing with businesses in other states.

#### COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

The proposed Regulations have no comparable federal regulations.

#### AUTHORITY

Section 15606(a) of the Government Code, section 25299.42 of the Health and Safety Code, and sections 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250, of the Revenue and Taxation Code

#### REFERENCES

Revenue and Taxation Code sections 7659.9, 7659.92, 8760, 8762, 30190, 30192, 32260, 32262, 40067, 40069, 41060, 41062, 43170, 43172, 45160, 45162, 46160, 46162, 50112.7, 50112.9, 55050, 55052, 60250, and 60252.

#### CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. M. Judith Nelson, telephone (916) 324-2641, fax (916) 323-3387, e-mail [Judy.Nelson@boe.ca.gov](mailto:Judy.Nelson@boe.ca.gov), P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082,

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail [Karen.Anderson@boe.ca.gov](mailto:Karen.Anderson@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane

Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

#### ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a statement of reasons and an underscored version of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>. Requests for copies should be addressed to Ms. Diane G. Olson, Regulations Coordinator, at P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080, telephone (916) 322-9569.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It also will be available for your inspection at 450 N Street, Sacramento, CA 94279-0080.

#### ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for 15 days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for 15 days after the date on which the modified regulation is made available to the public.

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.  
DBA ASI Telesystems, Inc.  
21150 Califa Street  
Woodland Hills, CA 91367

Bay Recycling  
800 77th Avenue  
Oakland, CA 94621

C & C Disposal Service  
P. O. Box 234  
Rocklin, CA 95677

Choi Engineering Corp.  
286 Greenhouse  
Marketplace, Suite 329  
San Leandro, CA 94579

Fries Landscaping  
25421 Clough  
Escalon, CA 95320

Marinda Moving, Inc.  
8010 Betty Lou Drive  
Sacramento, CA 95828

MI-LOR Corporation  
P. O. Box 60  
Leominster, MA 01453

Peoples Ridesharing  
323 Fremont Street  
San Francisco, CA 94105

San Diego Physicians &  
Surgeons Hospital  
446 26th Street  
San Diego, CA

Southern CA Chemicals  
8851 Dice Road  
Santa Fe Springs, CA 90670

Tanemura and Antle Co.  
1400 Schilling Place  
Salinas, CA 93912

Turtle Building Maintenance Co.  
8132 Darien Circle  
Sacramento, CA 95828

Univ Research Foundation  
8422 La Jolla Shore Dr.  
La Jolla, CA 92037

Vandergoot Equipment Co.  
P. O. Box 925  
Middletown, CA 95461

### DEPARTMENT OF FISH AND GAME

#### CESA CONSISTENCY DETERMINATION FOR PALCO Timber Harvest Humboldt County

On January 12, 2005, the Pacific Lumber Company ("PALCO") notified the Department of Fish and Game ("Department") that PALCO proposes to rely on authorization granted by the U.S. Fish and Wildlife Service ("USFWS") in Incidental Take Permit number TE828950-0 and by the National Marine Fisheries Service ("NOAA Fisheries") in Incidental Take Permit number 1157 to carry out a project that could adversely affect species protected under both the federal Endangered Species Act ("ESA") and California Endangered Species Act ("CESA"). The project is the implementation of the PALCO Habitat Conservation Plan ("HCP"). The activities described in the HCP could result in "take" of marbled murrelet (*Brachyramphus marmoratus*) and Southern Oregon/Northern California Coast ESU Coho Salmon (*Oncorhynchus kisutch*) ("SONCC Coho salmon") as defined by the ESA and the CESA.

Pursuant to Fish and Game Code section 2080.1, PALCO is requesting that the Department determine that the Federal Incidental Take Permits are consistent with CESA for the above described HCP activities. If the Department determines that the Federal Incidental Take Permits are consistent, PALCO will not be required to obtain a separate incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF FISH AND GAME****PROPOSED MANAGEMENT OF A FULLY PROTECTED SPECIES**

Trapping and translocating Golden Eagles from the Channel Islands to eastern California counties

The Department of Fish and Game ("Department") has received a request for a Memorandum of Understanding (MOU) to authorize staff and assistants of The Institute for Wildlife Studies ("IWS"), under direction of Mr. David Garcelon, to take Golden Eagles (*Aquila chrysaetos*), a Fully Protected Bird. The purpose of the work is to end eagle predation on the remnant populations of State and Federally endangered Island Foxes (*Urocyon littoralis*), as part of recovery programs for those foxes. Cooperators are Channel Islands National Park, U.S. Fish and Wildlife Service, and The Nature Conservancy. The goal is to remove all Golden Eagles from the Channel Islands. This application is for non-lethal take only. Golden eagles are not thought to be native to the Channel Islands having only been documented there since the late 1990s.

IWS requests authorization to live-trap the eagles, transport them by air and automobile to suitable mainland eagle habitats in eastern California counties, mainly Modoc and Inyo counties, and tag birds with radio transmitters before release. Any transport of Golden Eagles outside California as part of their immediate transportation to the California release sites, would be authorized under Federal permit. IWS also requests authorization to enter active Golden Eagle nests. Trapping methods include standard raptor research trapping techniques, including radio-controlled bownet and powersnare, Dho-gazza net, cannon net, CODA net gun, pit trap, noose jacket, anesthetic, and in-nest capture by hand. Specially developed in-nest trapping techniques would include use of nest nets or sticky-sticks. A technique for capturing particularly difficult-to-trap females at the nest would entail removing Golden Eagle eggs and replacing them with hawk nestlings obtained under separate permits, and, after capturing the brooding female on the nest, returning each nestling to the place of origin. The removed Golden Eagle eggs would be captive hatched, and nestlings would be placed into nests of Golden Eagles pairs on mainland California. Additional non-lethal capture methods may be used after prior approval from the Department and the U.S. Fish and Wildlife Service.

The applicant and assistants have the required Scientific Collecting Permits (SCP) to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from

Department for research on Fully Protected species. Also, applicants are required to possess a valid permit under the Federal Eagle Protection Act

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Birds after notification has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed management is consistent with the requirements of FGC Section 3511 for take of Fully Protected Birds, it would issue a Memorandum of Understanding on approximately March 4, 2005. The Department will accept relevant information or comment on the proposed MOU for 30 days from the date of publication. Contact: Habitat Conservation Planning Branch, 1416 Ninth Street, Sacramento, CA 95814, Attn.: Dale Steele.

<b>SUMMARY OF REGULATORY ACTIONS</b>
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**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

**BOARD FOR GEOLOGISTS AND GEOPHYSICISTS**

Registered Geologist Name Change

The Board for Geologists and Geophysicists are changing the title "registered engineer" to "professional engineer", and are further changing the required years of educational and work experience in professional geological work from seven years to five years in accordance with those changes made in Stats. 2003, Ch. 325.

Title 16

California Code of Regulations

AMEND: 3008, 3031, 3041, 3042, 3062.1

Filed 01/20/05

Effective 02/19/05

Agency Contact:

DeLesa Swanigan

(916) 263-2113

**COMMISSION ON PEACE OFFICER  
STANDARDS AND TRAINING****PC 832 Arrest and Firearms Course Requalification**

This regulatory action deletes the fees established by the Commission for applicants taking the PC 832 Requalification Exam and instead permits the presenter of the exam to charge a fee that shall not exceed actual test administration costs and is subject to POST audit.

**Title 11**

California Code of Regulations

AMEND: 1080

Filed 01/26/05

Effective 02/25/05

Agency Contact:

Patricia Cassidy (916) 227-4847

**DEPARTMENT OF ALCOHOL AND DRUG  
PROGRAMS****County SACPA Allocations**

This is the certification of compliance for an action that revises the formula for allocating Substance Abuse and Crime Prevention Act of 2000 funds to a county based upon population, treatment caseload, and drug arrest rate information.

**Title 9**

California Code of Regulations

AMEND: 9525

Filed 01/25/05

Effective 01/25/05

Agency Contact: Mary Conway (916) 327-4742

**DEPARTMENT OF FOOD AND AGRICULTURE  
Oak Mortality Disease Control**

This emergency action readopts the entire oak mortality disease control regulation for California. The prior oak mortality disease control regulation was repealed by mistake on 12/31/04 in accordance with the terms of an unmodified subsection (f) which mandated the repeal on 12/31/04 despite the continued existence of the oak mortality disease emergency.

**Title 3**

California Code of Regulations

ADOPT: 3700

Filed 01/21/05

Effective 01/21/05

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF FOOD AND AGRICULTURE  
Oak Mortality Disease Control**

Oak mortality disease presents a clear and present danger to the native stands of oak and other trees, the nursery industry, and other agricultural commodities and plant life of California. The California Department of Food and Agriculture adopted section 3700 of title 3 of the California Code of Regulations to arrest the artificial spread of the disease. On August 12, 2004

the causal pathogen of sudden oak disease was confirmed from two coast live oak trees located in San Francisco County. On August 26, 2004 Department received an email from the United States Department of Agriculture giving notice that it was modifying of the list of associated articles listed as regulated. This filing is a certificate of compliance for an emergency regulatory action which amended section 3700 to add San Francisco County to the list of regulated counties and modified the list of associated articles to conform to the federal changes.

**Title 3**

California Code of Regulations

AMEND: 3700 (b)(c)

Filed 01/21/05

Effective 01/21/05

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF JUSTICE****Certified Handgun Retesting**

This regulatory action amends the requirements for retesting to certify handguns as not being unsafe.

**Title 11**

California Code of Regulations

ADOPT: 968.97, 968.99 AMEND: 968.20, 968.35, 968.44, 968.60

Filed 01/19/05

Effective 01/19/05

Agency Contact: Steven Teeters (916) 263-0849

**DEPARTMENT OF MOTOR VEHICLES****Reduced Fee Identification Card**

This Certificate of Compliance adopts the requirements for determining eligibility for receiving an identification card for a reduced fee. (Previous OAL file # 04-0902-03E)

**Title 13**

California Code of Regulations

ADOPT: 15.07

Filed 01/26/05

Effective 01/26/05

Agency Contact: Maria Grijalva (916) 657-9001

**DEPARTMENT OF SOCIAL SERVICES****Transitional Food Stamps and Face-to-Face  
Interview Exemptions**

In this Certificate of Compliance regulatory action, the Department of Social Services amends its Food Stamp program regulations to include new provisions pertaining to transitional Food Stamp benefits and face-to-face interview exemptions/waivers.

**Title MPP**

California Code of Regulations

AMEND: 63-300, 63-504

Filed 01/25/05

Effective 01/25/05

Agency Contact: Alison Garcia (916) 657-2586



**DEPARTMENT OF THE YOUTH AUTHORITY**  
**Religious Services to Wards**

This rulemaking action regulates the practice of religion by Youth Authority wards to ensure that a substantial restriction is not placed on a ward's right to exercise his or her right to practice religion unless the exercise is inconsistent with a compelling governmental interest, and the restriction is the least restrictive means. The regulations define terms, provide for weekly access to religious services and/or alternative services, provide for access to religious programs, specify the only reasons a ward may be restricted from attending religious services and programs, and specify religious practices and activities that are restricted. The regulations also address religion related matters including the observance of holy days, grooming, personal property, literature, diet, and proselytizing.

Title 15  
 California Code of Regulations  
 ADOPT: 4750, 4750.1 AMEND: 4751  
 Filed 01/25/05  
 Effective 02/24/05  
 Agency Contact:  
 Catherine Sorenson (916) 262-3178

**EDUCATION AUDIT APPEALS PANEL**  
**Audits of K-12 Local Education Agencies**  
**FY 04-05**

This is the certification of compliance for adoption of regulations that update the audit guide for annual review of the books and accounts of local education agencies.

Title 5  
 California Code of Regulations  
 ADOPT: 19814.1, 19832, 19833, 19834, 19835, 19836 REPEAL: 19814  
 Filed 01/19/05  
 Effective 01/19/05  
 Agency Contact:  
 Carolyn Pirillo (916) 445-7745

**MEDICAL BOARD OF CALIFORNIA**  
**Midwifery Liability Insurance**

This change without regulatory effect amends section 1379.20 of title 16 of the California Code of Regulations (CCR), concerning the disclosure of midwifery liability insurance, so that it is no longer inconsistent with Business and Professions Code section 2508, subdivision (b) (Stats. 2000, c. 303, sec. 2).

Title 16  
 California Code of Regulations  
 AMEND: 1379.20  
 Filed 01/24/05

Effective 02/23/05  
 Agency Contact:  
 Kevin A. Schunke (916) 263-2368

**OCCUPATIONAL SAFETY AND HEALTH**  
**STANDARDS BOARD**

**Hand Weeding, Hand Thinning and Hand Hot-Capping Operations in Agriculture**

This is the emergency readoption of an amendment that prohibits weeding and thinning by hand in agricultural operations in excess of 20 percent of an employee's work week, subject to four specified exceptions.

Title 8  
 California Code of Regulations  
 AMEND: 3456  
 Filed 01/26/05  
 Effective 02/04/05  
 Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH**  
**STANDARDS BOARD**

**Tree Climbing and Access**

The regulatory action is the Certificate of Compliance for the emergency amendment of section 3427 of Title 8 of the California Code of Regulations. Section 3427 specifies safe work procedures for tree climbing and access. (Prior OAL files 04-0420-04E and 04-0820-07EE.)

Title 8  
 California Code of Regulations  
 AMEND: 3427  
 Filed 01/24/05  
 Effective 01/24/05  
 Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH**  
**STANDARDS BOARD**

**Controlled Negative Pressure (CNP) REDON Fit Testing Procedures**

This regulatory action adopts federal standards for Controlled Negative Pressure (CNP) REDON Fit Testing Procedures. Pursuant to Labor Code section 142.3, this rulemaking action is exempt from OAL review.

Title 8  
 California Code of Regulations  
 AMEND: 5144  
 Filed 01/26/05  
 Effective 01/26/05  
 Agency Contact: Marley Hart (916) 274-5721

**SECRETARY OF STATE**

**Standards for Proof of Residency When Proof is Required by HAVA**

In this regulatory action, the Secretary of State readopts an emergency regulation setting forth

standards for proof of voter residency or identity when proof is required under the Help America Vote Act of 2002 (HAVA).

**Title 2**

California Code of Regulations

ADOPT: 20107

Filed 01/26/05

Effective 01/27/05

Agency Contact: Lisa B. Niegel (916) 653-3345

STATE WATER RESOURCES CONTROL BOARD  
Septic Tank Discharge Prohibition, Mission Creek,  
Desert Hot Springs

This change to the Water Quality Control Plan for the Colorado River Basin Region is intended to implement changes made to Water Code section 13281 which (1) prohibits the discharge of waste from individual disposal systems on parcels of less than one-half acre that overlie the Mission Creek Aquifer or the Desert Hot Springs Aquifer in Riverside County if a sewer system is available and (2) limit the number of equivalent dwelling units with individual disposal systems to two per acre for parcels of one-half acre or greater.

**Title 23**

California Code of Regulations

ADOPT: 3965

Filed 01/21/05

Effective 01/21/05

Agency Contact: Greg Frantz (916) 341-5553

**CCR CHANGES FILED WITH THE  
SECRETARY OF STATE  
WITHIN SEPTEMBER 8, 2004  
TO JANUARY 26, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 1**

10/13/04 ADOPT: 1015, 1019, 1048, 1050  
AMEND: 1000, 1002, 1004, 1006, 1008,  
1012, 1014, 1016, 1018, 1020, 1022,  
1024, 1026, 1027, 1028, 1030, 1032,  
1034, 1038, 1040, 1042, 1044, 1046

**Title 2**

01/26/05 ADOPT: 20107

01/04/05 AMEND: 18703.4, 18730, 18940.2,  
18942.1, 18943

01/03/05 ADOPT: Division 8, Chapter 108, Section 59530.

12/31/04 ADOPT: 18229

12/31/04 AMEND: 18545

12/20/04 ADOPT: 1859.71, 1859.78.1 AMEND:  
1859.2, 1859.73.2, 1859.79.2, 1859.82,  
1859.83

12/16/04 ADOPT: 1859.51.1, 1859.70.2 AMEND:  
1859.2, 1859.51, 1859.70, 1859.103,

12/06/04 AMEND: 1859.2, 1859.51

11/30/04 AMEND: Div. 8, Ch. 29, Sec. 50000

11/24/04 AMEND: 1866, 1866.1, 1866.2, 1866.4,  
1866.4.1, 1866.4.2, 1866.4.3, 1866.5,  
1866.5.1, 1866.7, 1866.13

11/22/04 AMEND: 58700

11/18/04 AMEND: 561, 561.1, 561.2, 561.4, 561.5,  
561.6, 561.7, 561.8, 561.9, 561.10,  
561.11, 561.12, 561.13, 561.14

11/10/04 ADOPT: 1859.163.1, 1859.163.2,  
1859.163.3, 1859.164.2, 1859.167.1  
AMEND: 1859.2, 1859.145, 1859.145.1,  
189.160, 1859.161, 1859.162, 1859.163,  
1859.164, 1859.164.1, 1859.165,  
1859.166, 1859.167, 1859.168, 1859.171

11/09/04 AMEND: 18530.8

11/04/04 AMEND: 1859.71.2, 1859.78.4

11/02/04 ADOPT: 1859.123.1 AMEND: 1859.2,  
1859.73.1, 1859.81, 1859.83, 1859.90,  
1859.120, 1859.121, 1859.122,  
1859.122.1, 1859.122.2, 1859.123,  
1859.124, 1859.124.1, 1859.125,  
1859.125.1, 1859.126, 1859.127,  
1859.129, 1859.130

11/02/04 AMEND: 1859.51, 1859.105

10/26/04 ADOPT: 18361.1, 18361.2, 18361.3,  
18361.4, 18361.5, 18361.6, 18361.7,  
18361.8, AMEND: 18361.5, 18406,  
18450.4, 18702.2, 18702.5, 18740,  
18747, 18754, 18951 REPEAL: 18361

09/29/04 ADOPT: 20107

09/23/04 ADOPT: 588, 588.1, 588.2, 588.3, 588.4,  
588.5, 588.6, 588.7, 588.8, 588.9,  
588.10

09/23/04 AMEND: 18401, 18421.1

09/15/04 ADOPT: 599.511 AMEND: 599.500(t)

09/10/04 AMEND: 54300

09/09/04 AMEND: 18704.2

**Title 3**

01/21/05 AMEND: 3700(b)(c)

01/21/05 ADOPT: 3700

01/14/05 AMEND: 3700(c)

01/13/05 AMEND: 3962(a)

12/20/04 REPEAL: 305, 306

11/29/04 AMEND: 3423(b)

11/17/04 AMEND: 1703.3

11/16/04 AMEND: Subchapter 1.1

11/10/04 AMEND: 3601(g)  
 11/03/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,  
 6784 AMEND: 6000, REPEAL: 6450,  
 6450.1, 6450.2, 6250.3, 6784  
 10/25/04 AMEND: 3700(c)  
 10/14/04 AMEND: 3423(b)  
 10/13/04 AMEND: 3700(b)  
 10/06/04 ADOPT: 2042, 2100, 2101, 2102  
 10/06/04 AMEND: 3877(a), 3883, 3885(a)(b),  
 4603(f) REPEAL: 3902  
 10/04/04 AMEND: 1280.2  
 09/22/04 AMEND: 3430(b)  
 09/20/04 AMEND: 3700  
 09/09/04 AMEND: 6502  
 09/08/04 AMEND: 3423(b)  
 09/08/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,  
 6784 AMEND: 6000 REPEAL: 6450,  
 6450.1, 6450.2, 6450.3, 6784

**Title 4**

12/23/04 ADOPT: 10163, 10164 AMEND: 10152,  
 10153, 10154, 10155, 10156, 10157,  
 10158, 10159, 10160, 10161, 10162  
 12/20/04 ADOPT: 12200, 12200.1, 12200.3,  
 12200.5, 12200.6, 12200.7, 12200.9,  
 12200.10A, 12200.10B, 12200.10C,  
 12200.11, 12200.13, 12200.14, 12200.15,  
 12200.16, 12200.17, 12200.18, 12200.20,  
 12200.21, 12201, 12202, 12203, 12203A,  
 12203.1, 12203.2, 12203.3, 12203.  
 12/16/04 ADOPT: 10300, 10301, 10302, 10303,  
 10304, 10305, 10306, 10307, 10308,  
 10309, 10310, 10311, 10312, 10313,  
 10314, 10315, 10316, 10317, 10318,  
 10319, 10320, 10321, 10322, 10323,  
 10324, 10325, 10326, 10327, 10328,  
 10329, 10330, 10331, 10332, 10333,  
 10334,  
 12/16/04 ADOPT: 144  
 11/29/04 AMEND: 1846.5  
 11/23/04 ADOPT: 2444 AMEND: 2241, 2242,  
 2243, 2245, 2250, 2270, 2271, 2272,  
 2300, 2401, 2422, 2423, 2424, 2425,  
 2426, 2441, 2442, 2443, 2505, 2507,  
 2511, 2512  
 11/08/04 ADOPT: 12360, 12370  
 10/18/04 ADOPT: 12270, 12271, 12272  
 10/14/04 AMEND: 1402, 1471, 2056, 2101, 2102,  
 2103  
 10/13/04 AMEND: 1371  
 09/23/04 ADOPT: 144  
 09/20/04 AMEND: 12101, 12122, 12250

**Title 5**

01/19/05 ADOPT: 19814.1, 19832, 19833, 19834,  
 19835, 19836 REPEAL: 19814  
 01/10/05 ADOPT: 3088.1, 3088.2  
 12/08/04 ADOPT: 9517.1 AMEND: 9515, 9517

11/16/04 ADOPT: 80089.3, 80089.4  
 11/15/04 ADOPT: 6116, 6126 AMEND: 6100,  
 6115, 6125  
 11/09/04 ADOPT: 14105  
 11/04/04 AMEND: 11981, 11985  
 11/02/04 AMEND: 58311, 58316  
 09/30/04 ADOPT: 19814.1, 19832, 19833, 19834,  
 19835, 19837, 19837 AMEND: 19814  
 09/22/04 AMEND: 11530  
 09/14/04 AMEND: 58310, 58312, 58314  
 09/08/04 ADOPT: 58139

**Title 7**

12/06/04 AMEND: 213, 218

**Title 8**

01/26/05 AMEND: 3456  
 01/26/05 AMEND: 5144  
 01/24/05 AMEND: 3427  
 12/31/04 ADOPT: 9785.4, AMEND: 9725, 9726,  
 9727, 9785, 9785.2, 9785.3, 9805, 10150,  
 10152, 10156, 10158, 10160, 10163,  
 10165.5 REPEAL: 10151, 10154  
 12/31/04 ADOPT: 9768.1, 9768.2, 9768.3, 9768.4,  
 9768.5, 9768.6, 9768.7, 9768.8, 9768.9,  
 9768.10, 9768.11, 9768.12, 9768.13,  
 9768.14, 9768.15, 9768.16, 9768.17  
 12/30/04 AMEND: 3380(d)  
 12/27/04 ADOPT: 32032, 32033, 32034, 32035,  
 81000, 81005, 81010, 81020, 81030,  
 81040, 81050, 81055, 81060, 81065,  
 81070, 81075, 81080, 81090, 81100,  
 81105, 81110, 81115, 81120, 81125,  
 81130, 81135, 81140, 81145, 81150,  
 81155, 81160, 81165, 81170, 81175,  
 81180,  
 12/15/04 AMEND: 9789.11  
 12/15/04 ADOPT: 9788.01, 9788.1, 97883.11,  
 9788.2, 9788.3, 9788.31, 9788.32,  
 9788.4, 9788.45, 9788.5, 9788.6, 9788.7,  
 9788.8, 9788.9, 9788.91  
 12/09/04 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9,  
 9792.10, 9792.11 REPEAL: 9792.6  
 12/08/04 AMEND: 1602(a)  
 12/08/04 AMEND: 3210, 3212  
 12/07/04 AMEND: 3314  
 11/09/04 AMEND: 6777  
 11/03/04 AMEND: 1541(l)(1)  
 11/03/04 AMEND: 15220, 15220.1, 15220.3,  
 15220.4  
 11/01/04 ADOPT: 9767.1, 9767.2, 9767.3, 9767.4,  
 9767.5, 9767.6, 9767.7, 9767.8, 9767.9,  
 9767.10, 9767.11, 9767.12, 9767.13,  
 9767.14  
 10/19/04 ADOPT: 16421, 16422, 16423, 16424  
 AMEND: 16425, 16426, 16427, 16428,  
 16429, 16431, 16432, 16433, 16434,

16435, 16436, 16437, 16438, 16439  
 REPEAL: 16430, 16435.5  
 10/07/04 AMEND: 5144  
 10/07/04 AMEND: 3456  
 10/06/04 AMEND: 344.30  
 10/04/04 AMEND: 5155  
 10/04/04 ADOPT: 10202, 10102.1, 10203.1,  
 10203.2 AMEND: 10200, 10201, 10203,  
 10204  
 10/01/04 ADOPT: 3241.1  
 10/01/04 AMEND: 5155  
 09/30/04 AMEND: 3381

**Title 9**

01/25/05 AMEND: 9525  
 12/06/04 ADOPT: 9805, 9868 AMEND: 9801,  
 9801.5, 9804, 9812, 9820, 9824, 9848,  
 9867, 9878  
 10/28/04 AMEND: 9525

**Title 10**

01/14/05 AMEND: 2498.6  
 01/07/05 ADOPT: 2699.6608 AMEND: 2699.100,  
 2699.200, 2699.201, 2699.205, 2699.209,  
 2699.400, 2699.401, 2699.6500,  
 2699.6600, 2699.6606, 2699.6607,  
 2699.6611, 2699.6613, 2699.6617,  
 2699.6619, 2699.6625, 2699.6631,  
 2699.6705, 2699.6715, 2699.6717,  
 2699.6725, 2699.  
 12/28/04 AMEND: 2698.30, 2698.31, 2698.32,  
 2698.33, 2698.34, 2698.35, 2698.36,  
 2698.37, 2698.38, 2698.39, 2698.40,  
 2698.41 REPEAL: 2698.42, 2698.43,  
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 12/27/04 AMEND: 2580.1, 2580.2, 2580.3,  
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